
SENATE BILL 5733

State of Washington

60th Legislature

2007 Regular Session

By Senators Stevens and Jacobsen

Read first time 01/30/2007. Referred to Committee on Natural Resources, Ocean & Recreation.

1 AN ACT Relating to flood protection; and amending RCW 77.55.021.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

3 **Sec. 1.** RCW 77.55.021 and 2005 c 146 s 201 are each amended to
4 read as follows:

5 (1) Except as provided in RCW 77.55.031, 77.55.051, and 77.55.041,
6 in the event that any person or government agency desires to undertake
7 a hydraulic project, the person or government agency shall, before
8 commencing work thereon, secure the approval of the department in the
9 form of a permit as to the adequacy of the means proposed for the
10 protection of fish life. The department shall, when reviewing
11 applications for hydraulic projects specifically intended by the
12 applicant to eliminate or reduce damages to upland properties caused by
13 potential floods, give equal consideration to protecting fish life,
14 public safety, and private property.

15 (2) A complete written application for a permit may be submitted in
16 person or by registered mail and must contain the following:

17 (a) General plans for the overall project;

18 (b) Complete plans and specifications of the proposed construction

1 or work within the mean higher high water line in saltwater or within
2 the ordinary high water line in freshwater;

3 (c) Complete plans and specifications for the proper protection of
4 fish life; and

5 (d) Notice of compliance with any applicable requirements of the
6 state environmental policy act, unless otherwise provided for in this
7 chapter.

8 (3)(a) Protection of fish life is the only ground upon which
9 approval of a permit may be denied or conditioned. Approval of a
10 permit may not be unreasonably withheld or unreasonably conditioned.
11 Except as provided in this subsection and subsections (8), (10), and
12 ~~((11))~~ (12) of this section, the department has forty-five calendar
13 days upon receipt of a complete application to grant or deny approval
14 of a permit. The forty-five day requirement is suspended if:

15 (i) After ten working days of receipt of the application, the
16 applicant remains unavailable or unable to arrange for a timely field
17 evaluation of the proposed project;

18 (ii) The site is physically inaccessible for inspection;

19 (iii) The applicant requests a delay; or

20 (iv) The department is issuing a permit for a storm water discharge
21 and is complying with the requirements of RCW 77.55.161(3)(b).

22 (b) Immediately upon determination that the forty-five day period
23 is suspended, the department shall notify the applicant in writing of
24 the reasons for the delay.

25 (c) The period of forty-five calendar days may be extended if the
26 permit is part of a multiagency permit streamlining effort and all
27 participating permitting agencies and the permit applicant agree to an
28 extended timeline longer than forty-five calendar days.

29 (4) If the department denies approval of a permit, the department
30 shall provide the applicant a written statement of the specific reasons
31 why and how the proposed project would adversely affect fish life.
32 Issuance, denial, conditioning, or modification of a permit shall be
33 appealable to the department or the board as specified in RCW 77.55.301
34 within thirty days of the notice of decision.

35 (5)(a) The permittee must demonstrate substantial progress on
36 construction of that portion of the project relating to the permit
37 within two years of the date of issuance.

1 (b) Approval of a permit is valid for a period of up to five years
2 from the date of issuance, except as provided in (c) of this subsection
3 and in RCW 77.55.151.

4 (c) A permit remains in effect without need for periodic renewal
5 for hydraulic projects that divert water for agricultural irrigation or
6 stock watering purposes and that involve seasonal construction or other
7 work. A permit for streambank stabilization projects to protect farm
8 and agricultural land as defined in RCW 84.34.020 remains in effect
9 without need for periodic renewal if the problem causing the need for
10 the streambank stabilization occurs on an annual or more frequent
11 basis. The permittee must notify the appropriate agency before
12 commencing the construction or other work within the area covered by
13 the permit.

14 (6) The department may, after consultation with the permittee,
15 modify a permit due to changed conditions. The modification becomes
16 effective unless appealed to the department or the board as specified
17 in RCW 77.55.301 within thirty days from the notice of the proposed
18 modification. For hydraulic projects that divert water for
19 agricultural irrigation or stock watering purposes, or when the
20 hydraulic project or other work is associated with streambank
21 stabilization to protect farm and agricultural land as defined in RCW
22 84.34.020, the burden is on the department to show that changed
23 conditions warrant the modification in order to protect fish life.

24 (7) A permittee may request modification of a permit due to changed
25 conditions. The request must be processed within forty-five calendar
26 days of receipt of the written request. A decision by the department
27 may be appealed to the board within thirty days of the notice of the
28 decision. For hydraulic projects that divert water for agricultural
29 irrigation or stock watering purposes, or when the hydraulic project or
30 other work is associated with streambank stabilization to protect farm
31 and agricultural land as defined in RCW 84.34.020, the burden is on the
32 permittee to show that changed conditions warrant the requested
33 modification and that such a modification will not impair fish life.

34 (8) The department or the county legislative authority may declare
35 and continue an emergency. The county legislative authority shall
36 immediately notify the department if it declares an emergency under
37 this subsection. The department, through its authorized
38 representatives, shall issue immediately, upon request, oral approval

1 for a stream crossing, or work to remove any obstructions, repair
2 existing structures, restore streambanks, protect fish life, or protect
3 property threatened by the stream or a change in the stream flow
4 without the necessity of obtaining a written permit prior to commencing
5 work. Conditions of the emergency oral permit must be established by
6 the department and reduced to writing within thirty days and complied
7 with as provided for in this chapter. The department may not require
8 the provisions of the state environmental policy act, chapter 43.21C
9 RCW, to be met as a condition of issuing a permit under this
10 subsection.

11 (9) All state and local agencies with authority under this chapter
12 to issue permits or other authorizations in connection with emergency
13 water withdrawals and facilities authorized under RCW 43.83B.410 shall
14 expedite the processing of such permits or authorizations in keeping
15 with the emergency nature of such requests and shall provide a decision
16 to the applicant within fifteen calendar days of the date of
17 application.

18 (10) The department or the county legislative authority may
19 determine an imminent danger exists. The county legislative authority
20 shall notify the department, in writing, if it determines that an
21 imminent danger exists. In cases of imminent danger, the department
22 shall issue an expedited written permit, upon request, for work to
23 remove any obstructions, repair existing structures, restore banks,
24 protect fish resources, or protect property. Expedited permit requests
25 require a complete written application as provided in subsection (2) of
26 this section and must be issued within fifteen calendar days of the
27 receipt of a complete written application. Approval of an expedited
28 permit is valid for up to sixty days from the date of issuance. The
29 department may not require the provisions of the state environmental
30 policy act, chapter 43.21C RCW, to be met as a condition of issuing a
31 permit under this subsection.

32 (11) For any property that has experienced at least two consecutive
33 years of flooding or erosion that has damaged or has threatened to
34 damage a structure, water supply system, septic system, or access to
35 any road or highway, the county legislative authority must determine
36 that a chronic danger exists. The county legislative authority shall
37 notify the department, in writing, if it determines that a chronic
38 danger exists. In cases of chronic danger, the department shall issue

1 an expedited written permit, upon request, for work to remove any
2 obstructions, repair existing structures, restore banks, restore road
3 or highway access, protect fish resources, or protect property.
4 Expedited permit requests require a complete written application as
5 provided in subsection (2) of this section and must be issued within
6 thirty calendar days of the receipt of a complete written application.
7 Approval of an expedited permit is valid for up to one hundred twenty
8 days from the date of issuance. The department may not require the
9 provisions of the state environmental policy act, chapter 43.21C RCW,
10 to be met as a condition of issuing a permit under this subsection.
11 As a condition of issuing a permit under this subsection, the
12 department may require reasonable measures designed to protect fish
13 life, provided that the conditions do not preclude the property owner
14 from taking reasonable actions necessary to prevent future flooding or
15 erosion damage or threats from future flooding or erosion damage.

16 (12) The department may issue an expedited written permit in those
17 instances where normal permit processing would result in significant
18 hardship for the applicant or unacceptable damage to the environment.
19 Expedited permit requests require a complete written application as
20 provided in subsection (2) of this section and must be issued within
21 fifteen calendar days of the receipt of a complete written application.
22 Approval of an expedited permit is valid for up to sixty days from the
23 date of issuance. The department may not require the provisions of the
24 state environmental policy act, chapter 43.21C RCW, to be met as a
25 condition of issuing a permit under this subsection.

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